

PART II – CONTRACT CLAUSES

SECTION I

CONTRACT CLAUSES

I.1 FAR 52.252-2, CLAUSES INCORPORATED BY REFERENCE (FEB 1998)

This Contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at these addresses:

<https://www.acquisition.gov/?q=browsefar>

<http://energy.gov/management/downloads/searchable-electronic-department-energy-acquisition-regulation>

| Clause No. | FAR/DEAR Reference | Title | Fill-In Information See FAR 52.104(d) |
|------------|--------------------|---|--|
| I.2 | 52.202-1 | Definitions (Nov 2013) | |
| I.3 | 52.203-3 | Gratuities (Apr 1984) | |
| I.4 | 52.203-5 | Covenant Against Contingent Fees (May 2014) | |
| I.5 | 52.203-6 | Restrictions on Subcontractor Sales to the Government (Sep 2006) | |
| I.6 | 52.203-7 | Anti-Kickback Procedures (May 2014) | |
| I.7 | 52.203-8 | Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity (May 2014) | |
| I.8 | 52.203-10 | Price or Fee Adjustment for Illegal or Improper Activity (May 2014) | |
| I.9 | 52.203-12 | Limitation on Payments to Influence Certain Federal Transactions (Oct 2010) | |
| I.10 | 52.203-13 | Contractor Code of Business Ethics and Conduct (Oct 2015) | |
| I.11 | 52.203-14 | Display of Hotline Poster(s) (Oct 2015) | (b)(3) DOE IG Hotline Poster: http://energy.gov/sites/prod/files/igprod/documents/Hotline_poster.pdf |
| I.12 | 52.203-17 | Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (Apr 2014) | |
| I.13 | 52.204-4 | Printed or Copied Double-Sided on Postconsumer Fiber Content Paper (May 2011) | |
| I.14 | 52.204-9 | Personal Identity Verification of Contractor Personnel (Jan 2011) | |

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| I.15 | 52.204-10 | Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2015) | |
| I.16 | 52.204-13 | System for Award Management Maintenance (Jul 2013) | |
| I.17 | 52.204-14 | Service Contract Reporting Requirements (Jan 2014) | |
| I.18 | 52.204-15 | Service Contract Reporting Requirements for Indefinite-Delivery Contracts (Jan 2014) | |
| I.19 | 52.204-18 | Commercial and Government Entity Code Maintenance (Nov 2014) | |
| I.20 | 52.204-19 | Incorporation by Reference of Representations and Certifications (Dec 2014) | |
| I.21 | 52.209-6 | Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, Or Proposed for Debarment (Oct 2015) | |
| I.22 | 52.209-9 | Updates of Publicly Available Information Regarding Responsibility Matters (Jul 2013) | |
| I.23 | 52.209-10 | Prohibition on Contracting With Inverted Domestic Corporations (Dec 2014) | |
| I.24 | 52.210-1 | Market Research (Apr 2011) | |
| I.25 | 52.215-2 | Audit and Records – Negotiation (Oct 2010) | |
| I.26 | 52.215-8 | Order of Precedence – Uniform Contract Format (Oct 1997) | |
| I.27 | 52.215-11 | Price Reduction for Defective Certified Cost or Pricing Data – Modifications (Aug 2011) | |
| I.28 | 52.215-13 | Subcontractor Certified Cost or Pricing Data – Modifications (Oct 2010) | |
| I.29 | 52.215-15 | Pension Adjustments and Asset Reversions (Oct 2010) | |
| I.30 | 52.215-17 | Waiver of Facilities Capital Cost of Money (Oct 1997) | |
| I.31 | 52.215-18 | Reversion or Adjustment of Plans for Post-Retirement Benefits (PRB) Other Than Pensions (Jul 2005) | |
| I.32 | 52.215-19 | Notification of Ownership Changes (Oct 1997) <i>See full text version in Section I below</i> | |
| I.33 | 52.215-21 | Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data – Modifications (Oct 2010) (Alt III (Oct 1997)) | (c) CD-ROM, as requested by the Contracting Officer. |
| I.34 | 52.215-23 | Limitations on Pass-Through Charges (Oct 2009) | |
| I.35 | 52.216-7 | Allowable Cost and Payment (Jun 2013) – Alt I (Feb 1997) (Alt I for the construction CLIN) | (a)(3)15 th (cost invoices) and 30 th (fee invoices) |
| I.36 | 52.216-18 | Ordering (Oct 1995) <i>See full text version in Section I below (applies to IDIQ CLINs only)</i> | (a) the date of contract award through the end of contract performance |

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| I.37 | 52.216-19 | Order Limitations (Oct 1995) <i>See full text version in Section I below (applies to IDIQ CLINs only)</i> | (a) \$0 (b)(1) \$56,000,000 (b)(2) \$112,000,000 (b)(3) 365 (d) 5 |
| I.38 | 52.216-22 | Indefinite Quantity (Oct 1995) <i>See full text version in Section I below (applies to IDIQ CLINs only)</i> | (d) one year beyond the expiration date of the contract period |
| I.39 | 52.217-2 | Cancellation Under Multiyear Contracts (Oct 1997) | |
| I.40 | 52.217-8 | Option to Extend Services (Nov 1999) | 30 days of the contract expiration date |
| I.41 | 52.217-9 | Option to Extend the Term of the Contract (Mar 2000) | (a) 30 days of the contract expiration date; 60 days (c) 10 years and 3 months |
| I.42 | 52.219-4 | Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Oct 2014) | [Offeror Fill-In] |
| I.43 | 52.219-8 | Utilization of Small Business Concerns (Oct 2014) | |
| I.44 | 52.219-9 | Small Business Subcontracting Plan (Oct 2015) – Alt II (Oct 2001) | |
| I.45 | 52.219-16 | Liquidated Damages – Subcontracting Plan (Jan 1999) | |
| I.46 | 52.219-28 | Post-Award Small Business Program Rerepresentation (Jul 2013) | (g) Contractor Fill-In After Award, as applicable |
| I.47 | 52.222-1 | Notice to the Government of Labor Disputes (Feb 1997) | |
| I.48 | 52.222-2 | Payment for Overtime Premiums (Jul 1990) | (a) zero (0) |
| I.49 | 52.222-3 | Convict Labor (Jun 2003) | |
| I.50 | 52.222-4 | Contract Work Hours and Safety Standards – Overtime Compensation (May 2014) | |
| I.51 | 52.222-6 | Construction Wage Rate Requirements (May 2014) | |
| I.52 | 52.222-7 | Withholding of Funds (May 2014) | |
| I.53 | 52.222-8 | Payrolls and Basic Records (May 2014) | |
| I.54 | 52.222-9 | Apprentices and Trainees (Jul 2005) | |
| I.55 | 52.222-10 | Compliance with Copeland Act Requirements (Feb 1988) | |
| I.56 | 52.222-11 | Subcontracts (Labor Standards) (May 2014) | |
| I.57 | 52.222-12 | Contract Termination – Debarment (May 2014) | |
| I.58 | 52.222-13 | Compliance with Construction Wage Rate Requirements and Related Regulations (May 2014) | |
| I.59 | 52.222-14 | Disputes Concerning Labor Standards (Feb 1988) | |
| I.60 | 52.222-15 | Certification of Eligibility (May 2014) | |
| I.61 | 52.222-16 | Approval of Wage Rates (May 2014) | |

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|-------------|-----------|---|--------------------------------|
| I.62 | 52.222-17 | Nondisplacement of Qualified Workers (May 2014) | |
| I.63 | 52.222-21 | Prohibition of Segregated Facilities (Apr 2015) | |
| I.64 | 52.222-26 | Equal Opportunity (Apr 2015) | |
| I.65 | 52.222-27 | Affirmative Action Compliance Requirements for Construction (Apr 2015) | |
| I.66 | 52.222-30 | Construction Wage Rate Requirements– Price Adjustment (None or Separately Specified Method) (May 2014) | |
| I.67 | 52.222-35 | Equal Opportunity for Veterans (Oct 2015) | |
| I.68 | 52.222-36 | Equal Opportunity for Workers With Disabilities (Jul 2014) | |
| I.69 | 52.222-37 | Employment Reports on Veterans (Oct 2015) | |
| I.70 | 52.222-40 | Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) | |
| I.71 | 52.222-41 | Service Contract Labor Standards (May 2014) | |
| I.72 | 52.222-42 | Statement of Equivalent Rates for Federal Hires (May 2014) <i>See full text version in Section I below</i> | See full text below |
| I.73 | 52.222-43 | Fair Labor Standards Act and Service Contract Labor Standards – Price Adjustment (Multiple Year and Option Contracts) (May 2014) <i>Applies to firm-fixed-price task orders only</i> | |
| I.74 | 52.222-50 | Combating Trafficking in Persons (Mar 2015) | |
| I.75 | 52.222-54 | Employment Eligibility Verification (Oct 2015) | |
| I.76 | 52.222-55 | Minimum Wages Under Executive Order 13658 (Dec 2014) | |
| I.77 | 52.223-2 | Affirmative Procurement of Biobased Products Under Service and Construction Contracts (Sep 2013) | |
| I.78 | 52.223-3 | Hazardous Material Identification and Material Safety Data (Jan 1997) – Alt I (Jul 1995) | (b) [Offeror Fill-In] |
| I.79 | 52.223-5 | Pollution Prevention and Right-to-Know Information (May 2011) | |
| I.80 | 52.223-6 | Drug-Free Workplace (May 2001) | |
| I.81 | 52.223-7 | Notice of Radioactive Materials (Jan 1997) | (a) 60 |
| I.82 | 52.223-9 | Estimate of Percentage of Recovered Material Content for EPA-Designated Items (May 2008) <i>See full text version in Section I below</i> | (b)(2) the Contracting Officer |
| I.83 | 52.223-10 | Waste Reduction Program (May 2011) | |
| I.84 | 52.223-12 | Refrigeration Equipment and Air Conditioners (May 1995) | |
| I.85 | 52.223-13 | Acquisition of EPEAT® – Registered Imaging Equipment (Jun 2014) | |
| I.86 | 52.223-14 | Acquisition of EPEAT® – Registered Televisions (Jun 2014) | |
| I.87 | 52.223-15 | Energy Efficiency in Energy-Consuming Products (Dec 2007) | |
| I.88 | 52.223-16 | Acquisition of EPEAT®-Registered Personal Computer Products (Oct 2015) | |
| I.89 | 52.223-17 | Affirmative Procurement of EPA-designated Items in Service and Construction Contracts (May 2008) | |

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| I.90 | 52.223-18 | Encouraging Contractors Policies to Ban Text Messaging While Driving (Aug 2011) | |
| I.91 | 52.223-19 | Compliance with Environmental Management Systems (May 2011) | |
| I.92 | 52.224-1 | Privacy Act Notification (Apr 1984) | |
| I.93 | 52.224-2 | Privacy Act (Apr 1984) | |
| I.94 | 52.225-1 | Buy American – Supplies (May 2014) | |
| I.95 | 52.225-11 | Buy American – Construction Materials Under Trade Agreements (May 2014) <i>See full text version in Section I below</i> | (b)(3) None |
| I.96 | 52.225-13 | Restrictions on Certain Foreign Purchases (Jun 2008) | |
| I.97 | 52.226-1 | Utilization of Indian Organizations and Indian-Owned Economic Enterprises (Jun 2000) | |
| I.98 | 52.227-1 | Authorization and Consent (Dec 2007) | |
| I.99 | 52.227-2 | Notice and Assistance Regarding Patent and Copyright Infringement (Dec 2007) | |
| I.100 | 52.227-3 | Patent Indemnity (Apr 1984) | |
| I.101 | 52.227-4 | Patent Indemnity – Construction Contracts (Dec 2007) | |
| I.102 | 52.227-23 | Rights to Proposal Data (Technical) (Jun 1987) (Deviation) <i>See full text version in Section I below</i> | [Offeror Fill-In] |
| I.103 | 52.228-5 | Insurance – Work on a Government Installation (Jan 1997) <i>Applies to firm-fixed-price task orders only</i> | |
| I.104 | 52.229-3 | Federal, State, and Local Taxes (Feb 2013) <i>Applies to firm-fixed-price task orders only</i> | |
| I.105 | 52.230-2 | Cost Accounting Standards (Oct 2015) | |
| I.106 | 52.230-6 | Administration of Cost Accounting Standards (Jun 2010) | |
| I.107 | 52.232-1 | Payments (Apr 1984) <i>Applies to firm-fixed-price task orders only</i> | |
| I.108 | 52.232-8 | Discounts for Prompt Payment (Feb 2002) <i>Applies to firm-fixed-price task orders only</i> | |
| I.109 | 52.232-9 | Limitation of Withholding of Payments (Apr 1984) | |
| I.110 | 52.232-11 | Extras (Apr 1984) <i>Applies to firm-fixed-price task orders only</i> | |
| I.111 | 52.232-17 | Interest (May 2014) | |
| I.112 | 52.232-18 | Availability of Funds (Apr 1984) | |
| I.113 | 52.232-22 | Limitation of Funds (Apr 1984) | |
| I.114 | 52.232-23 | Assignment of Claims (May 2014) | |
| I.115 | 52.223-25 | Prompt Payment (Jul 2013) – Alt I (Feb 2002) | |
| I.116 | 52.232-27 | Prompt Payment for Construction Contracts (May 2014) | |
| I.117 | 52.232-33 | Payment by Electronic Funds Transfer – System for Award Management (Jul 2013) | |
| I.118 | 52.232-39 | Unenforceability of Unauthorized Obligations (Jun 2013) | |
| I.119 | 52.232-40 | Providing Accelerated Payments to Small Business Subcontractors (Dec 2013) | |
| I.120 | 52.233-1 | Disputes (May 2014) – Alt I (Dec 1991) | |
| I.121 | 52.233-3 | Protest after Award (May 2014) – Alt I (Jun 1985) | |

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| I.122 | 52.233-4 | Applicable Law for Breach of Contract Claim (Oct 2004) | |
| I.123 | 52.236-5 | Material and Workmanship (Apr 1984) | |
| I.124 | 52.236-7 | Permits and Responsibilities (Nov 1991) | |
| I.125 | 52.236-18 | Work Oversight in Cost-Reimbursement Construction Contracts (Apr 1984) | |
| I.126 | 52.236-19 | Organization and Direction of the Work (Apr 1984) | |
| I.127 | 52.237-2 | Protection of Government Buildings, Equipment, and Vegetation (Apr 1984) | |
| I.128 | 52.237-3 | Continuity of Services (Jan 1991) | |
| I.129 | 52.242-1 | Notice of Intent to Disallow Costs (Apr 1984) | |
| I.130 | 52.242-3 | Penalties for Unallowable Costs (May 2014) | |
| I.131 | 52.242-4 | Certification of Final Indirect Costs (Jan 1997) | |
| I.132 | 52.242-13 | Bankruptcy (Jul 1995) | |
| I.133 | 52.243-1 | Changes – Fixed Price (Aug 1987) – Alt II (Apr 1984) <i>Applies to firm-fixed-price task orders only</i> | |
| I.134 | 52.243-2 | Changes – Cost Reimbursement (Aug 1987) – Alt II and III (Apr 1984). <i>(Application of the specific alternate will be dependent upon the circumstances of the change, as determined by the Contracting Officer)</i> | |
| I.135 | 52.243-6 | Change Order Accounting (Apr 1984) | |
| I.136 | 52.244-2 | Subcontracts (Oct 2010) – Alt I (Jun 2007) | (d) Contracting Officer fill in at award (j) Contracting Officer fill in at award |
| I.137 | 52.244-5 | Competition in Subcontracting (Dec 1996) | |
| I.138 | 52.244-6 | Subcontracts for Commercial Items (Oct 2015) | |
| I.139 | 52.245-1 | Government Property (Apr 2012), as modified by DEAR 952.245-5 “and DOE Acquisition Regulation Subpart 945.5” after the reference to FAR Subpart 45.5 in paragraphs (e)(1) and (e)(2) of the clause | |
| I.140 | 52.245-9 | Use and Charges (Apr 2012) | |
| I.141 | 52.246-25 | Limitation of Liability – Services (Feb 1997) | |
| I.142 | 52.247-1 | Commercial Bill of Lading Notations (Feb 2006) | (a) Department of Energy (b) Department of Energy Solicitation No. DE-SOL-0008913 the Contract Administration Office specified in Section G |
| I.143 | 52.247-63 | Preference for U.S.-Flag Air Carriers (June 2003) | |

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| I.144 | 52.247-67 | Submission of Transportation Documents for Audit (Feb 2006) <i>See full text version below in Section I</i> | |
| I.145 | 52.247-68 | Report of Shipment (REPSHIP) (Feb 2006) | |
| I.146 | 52.248-1 | Value Engineering (Oct 2010) | (m) Contracting Officer fill in at award |
| I.147 | 52.248-3 | Value Engineering – Construction (Oct 2015) | |
| I.148 | 52.249-2 | Termination for Convenience of the Government (Fixed-Price) (Apr 2012) <i>Applies to firm-fixed-price task orders only</i> | |
| I.149 | 52.249-6 | Termination (Cost-Reimbursement) (May 2004) – Alt I (Sep 1996) <i>Alternate I is applicable to the construction CLINs only</i> | |
| I.150 | 52.249-8 | Default (Fixed-Price Supply and Service) (Apr 1984) <i>Applies to firm-fixed-price task orders only</i> | |
| I.151 | 52.249-14 | Excusable Delays (Apr 1984) | |
| I.152 | 52.251-1 | Government Supply Sources (Apr 2012) | |
| I.153 | 52.251-2 | Interagency Fleet Management System Vehicles and Related Services (Jan 1991) | |
| I.154 | 52.252-6 | Authorized Deviations in Clauses (Apr 1984) <i>See full text version below in Section I</i> | |
| I.155 | 52.253-1 | Computer Generated Forms (Jan 1991) | |
| I.156 | 952.202-1 | Definitions (Feb 2011) | |
| I.157 | 952.203-70 | Whistleblower Protection for Contractor Employees (Dec 2000) | |
| I.158 | 952.204-2 | Security (Mar 2011) | |
| I.159 | 952.204-70 | Classification/Declassification (Sep 1997) | |
| I.160 | 952.204-71 | Sensitive Foreign Nations Controls (Mar 2011) | |
| I.161 | 952.204-75 | Public Affairs (Dec 2000) | |
| I.162 | 952.204-77 | Computer Security (Aug 2006) | |
| I.163 | 952.208-7 | Tagging of Leased Vehicles (Apr 1984) | |
| I.164 | 952.208-70 | Printing (Apr 1984) | |
| I.165 | 952.209-72 | Organizational Conflicts of Interest (Aug 2009) – Alt I (Feb 2011) | (b)(1)(i) zero (0) |
| I.166 | 952.215-70 | Key Personnel (Dec 2000) | |
| I.167 | 952.216-7 | Allowable Cost and Payment (Feb 2011) | |
| I.168 | 952.217-70 | Acquisition of Real Property (Mar 2011) | |
| I.169 | 952.219-70 | DOE Mentor-Protégé Program (May 2000) | |
| I.170 | 952.223-71 | Integration of Environment, Safety, and Health into Work Planning and Execution (July 2009) | |
| I.171 | 952.223-72 | Radiation Protection and Nuclear Criticality (Apr 1984) | |
| I.172 | 952.223-75 | Preservation of Individual Occupational Radiation Exposure Records (Apr 1984) | |
| I.173 | 952.223-76 | Conditional Payment of Fee or Profit – Safeguarding Restricted Data and Other Classified Information and Protection of Worker Safety and Health (Dec 2010) | (b)(2)(i) 12 |

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| I.174 | 952.223-78 | Sustainable Acquisition Program (Oct 2010) | |
| I.175 | 952.225-71 | Compliance with Export Control Laws and Regulations (Nov 2015) | |
| I.176 | 952.226-74 | Displaced Employee Hiring Preference (Jun 1997) | |
| I.177 | 952.227-13 | Patent Rights – Acquisition by the Government (Sep 1997), as modified by DEAR 927.303(c) to include the Facilities License paragraph as paragraph 952.227-13(n) | |
| I.178 | 952.227-82 | Rights to Proposal Data (Apr 1984) | [Offeror Fill-In] |
| I.179 | 952.231-71 | Insurance – Litigation and Claims (Jul 2013) | |
| I.180 | 952.242-70 | Technical Direction (Dec 2000) <i>See full text version in Section I below</i> | |
| I.181 | 952.247-70 | Foreign Travel (Jun 2010) | |
| I.182 | 952.250-70 | Nuclear Hazards Indemnity Agreement (Jun 1996) | |
| I.183 | 952.251-70 | Contractor Employee Travel Discounts (Aug 2009) | |
| I.184 | 970.5204-1 | Counterintelligence (Dec 2010) | |
| I.185 | 970.5204-2 | Laws, Regulations, and DOE Directives (Dec 2000) | |
| I.186 | 970.5204-3 | Access To and Ownership of Records (Oct 2014) <i>See full text version in Section I below</i> | |
| I.187 | 970.5223-1 | Integration of Environment, Safety, and Health Into Work Planning and Execution (Dec 2000) | None |
| I.188 | 970.5223-4 | Workplace Substance Abuse Programs at DOE Sites (Dec 2010) | |
| I.189 | 970.5223-6 | Executive Order 13423, Strengthening Federal Environmental, Energy, and Transportation Management (Oct 2010) | |
| I.190 | 970.5226-3 | Community Commitment (Dec 2000) | |
| I.191 | 970.5227-1 | Rights in Data – Facilities (Dec 2000) (Deviation) <i>See full text version in Section I below</i> | |

This Contract incorporates one or more clauses by reference as indicated in the matrix above.

Any clauses that are included in full text are listed below and include the same Section I identifier in parentheses as was used above.

(I.32) FAR 52.215-19, NOTIFICATION OF OWNERSHIP CHANGES (OCT 1997)

(a) The Contractor shall make the following notifications in writing:

- (1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Administrative Contracting Officer (ACO) within 30 days.
- (2) The Contractor shall also notify the ACO within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall -

- (1) Maintain current, accurate, and complete inventory records of assets and their costs;
 - (2) Provide the ACO or designated representative ready access to the records upon request;
 - (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and
 - (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.
- (c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).

(I.36) FAR 52.216-18, ORDERING (OCT 1995)

- (a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from the date of contract award through the end of contract performance.
- (b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.
- (c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

(I.37) FAR 52.216-19, ORDER LIMITATIONS (OCT 1995)

- (a) *Minimum order.* When the Government requires supplies or services covered by this contract in an amount of less than \$0, the Government is not obligated to purchase, nor is the Contractor obligated to furnish, those supplies or services under the contract.
- (b) *Maximum order.* The Contractor is not obligated to honor --
- (1) Any order for a single item in excess of \$56,000,000;
 - (2) Any order for a combination of items in excess of \$112,000,000; or
 - (3) A series of orders from the same ordering office within 365 days that together call for quantities exceeding the limitation in subparagraph (b)(1) or (2) of this section.

- (c) If this is a requirements contract (*i.e.*, includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) of this section.
- (d) Notwithstanding paragraphs (b) and (c) of this section, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within 5 days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(I.38) FAR 52.216-22 INDEFINITE QUANTITY (OCT 1995)

- (a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.
- (b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."
- (c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- (d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after one year beyond the expiration date of the contract period.

(I.72) FAR 52.222-42, STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 2014)

In compliance with the Service Contract Labor Standards statute and the regulations of the Secretary of Labor (29 CFR part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

This Statement is for Information Only: It is not a Wage Determination

| Employee Class | Monetary Wage - Fringe Benefits |
|------------------------------|--|
| Accountant | \$36.28 |
| Admin Asst/Coord | \$23.95 |
| Admin Coord | \$32.84 |
| Assoc IT Analyst | \$32.84 |
| Assoc Labor Rlns Rep | \$29.66 |
| Assoc Project Control Spclst | \$39.95 |
| Assoc Safety & Health Spclst | \$32.84 |
| Contract Asst | \$29.66 |
| Document Control Spclst | \$32.84 |
| Eng & Tech Sppt Spclst | \$39.95 |
| Exec Asst/Coord | \$29.66 |
| FLM, Maintence/Mmachinist | \$43.90 |
| FLM, Rad Con | \$43.90 |
| Media Specialist | \$36.28 |
| Meeting/Events Plnr | \$43.90 |
| Recruitment/Employment Lead | \$43.90 |
| Sr Ops/Tech Training Spclst | \$52.62 |
| Sr Records/Info Spclst | \$43.90 |
| Sr Staff Contract Admin | \$62.58 |
| Sr. Exec Asst/Coord | \$32.84 |
| Sr. Payroll Analyst | \$39.95 |
| Sr. Procedures Writer | \$39.95 |
| Sr. Project Control Spclst | \$62.58 |
| Sr. Propert Mgmt Spclst | \$39.95 |
| Sr. Work Control Planner | \$39.95 |
| Staff Contract Admin | \$62.58 |
| Training Advisor | \$62.58 |
| Transfer Procedure Writer | \$43.90 |
| Work Control Planner | \$36.28 |
| Work Window Coord | \$52.62 |

**(I.82) FAR 52.223-9, ESTIMATE OF PERCENTAGE OF RECOVERED MATERIAL
CONTENT FOR EPA-DESIGNATED ITEMS (MAY 2008)**

(a) *Definitions.* As used in this clause—

“Postconsumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of “recovered material.”

“Recovered material” means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

(b) The Contractor, on completion of this contract, shall—

- (1) Estimate the percentage of the total recovered material content for EPA designated item(s) delivered and/or used in contract performance, including, if applicable, the percentage of post-consumer material content; and
- (2) Submit this estimate to the Contracting Officer.

(I.95) FAR 52.225-11, BUY AMERICAN – CONSTRUCTION MATERIALS UNDER TRADE AGREEMENTS (MAY 2014)

(a) *Definitions.* As used in this clause-

“Caribbean Basin country construction material” means a construction material that-

- (1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

“Commercially available off-the-shelf (COTS) item”-

(1) Means any item of supply (including construction material) that is-

- (i) A commercial item (as defined in paragraph (1) of the definition at FAR 2.101);
- (ii) Sold in substantial quantities in the commercial marketplace; and
- (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

“Component” means an article, material, or supply incorporated directly into a construction material.

“Construction material” means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material

regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

“Cost of components” means-

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

“Designated country” means any of the following countries:

- (1) A World Trade Organization Government Procurement Agreement country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or United Kingdom);
- (2) A Free Trade Agreement country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);
- (3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or
- (4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

“Designated country construction material” means a construction material that is a WTO GPA country construction material, an FTA country construction material, a

least developed country construction material, or a Caribbean Basin country construction material.

“Domestic construction material” means-

- (1) An unmanufactured construction material mined or produced in the United States;
- (2) A construction material manufactured in the United States, if-
 - (i) The cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic; or
 - (ii) The construction material is a COTS item.

“Foreign construction material” means a construction material other than a domestic construction material.

“Free Trade Agreement country construction material” means a construction material that-

- (1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

“Least developed country construction material” means a construction material that-

- (1) Is wholly the growth, product, or manufacture of a least developed country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

“United States” means the 50 States, the District of Columbia, and outlying areas.

“WTO GPA country construction material” means a construction material that-

- (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country

into a new and different construction material distinct from the materials from which it was transformed.

(b) Construction materials.

- (1) This clause implements 41 U.S.C. chapter 83, by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for construction material that is a COTS item. (See FAR 12.505(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American restrictions are waived for designated country construction materials.
- (2) The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.
- (3) The requirement in paragraph (b)(2) of this clause does not apply to information technology that is a commercial item or to the construction materials or components listed by the Government as follows: None
- (4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that-
 - (i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 6 percent;
 - (ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or
 - (iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American statute.

- (1)
 - (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including-
 - (A) A description of the foreign and domestic construction materials;
 - (B) Unit of measure;

- (C) Quantity;
 - (D) Price;
 - (E) Time of delivery or availability;
 - (F) Location of the construction project;
 - (G) Name and address of the proposed supplier; and
 - (H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.
- (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.
 - (iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).
 - (iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.
- (2) If the Government determines after contract award that an exception to the Buy American statute applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.
- (3) Unless the Government determines that an exception to the Buy American statute applies, use of foreign construction material is noncompliant with the Buy American statute.
- (d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Construction Materials Price Comparison

| Construction Material Description | Unit of Measure | Quantity | Price (Dollars)* |
|-----------------------------------|-----------------|----------|------------------|
|-----------------------------------|-----------------|----------|------------------|

Item 1:

Foreign construction material _____

Domestic construction material _____

Item 2:

Foreign construction material _____

Domestic construction material _____

*[List name, address, telephone number, and contact for suppliers surveyed.
Attach copy of response; if oral, attach summary.]*

[Include other applicable supporting information.]

[Include all delivery costs to the construction site and any applicable duty
(whether or not a duty-free entry certificate is issued).]*

**(I.102) FAR 52.227-23, RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987)
(DEVIATION)**

It is agreed that as a condition of award of this contract, and notwithstanding the conditions of any notice appearing thereon, the Government shall have unlimited rights (as defined in the "Rights in Data – Facilities (Deviation)" clause contained in this contract) in and to the technical data contained in the proposal dated [Offeror Fill-In], upon which this contract is based.

**(I.144) FAR 52.247-67, SUBMISSION OF TRANSPORTATION DOCUMENTS FOR AUDIT
(FEB 2006)**

(a) The Contractor shall submit to the address identified below, for prepayment audit, transportation documents on which the United States will assume freight charges that were paid –

(1) By the Contractor under a cost-reimbursement contract; and

(2) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.

(b) Cost-reimbursement Contractors shall only submit for audit those bills of lading with freight shipment charges exceeding \$100. Bills under \$100 shall be retained on-site by the Contractor and made available for on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.

(c) Contractors shall submit the above referenced transportation documents to—

[To be filled in by Contracting Officer]

(I.154) FAR 52.252-6, AUTHORIZED DEVIATIONS IN CLAUSES (APR 1984)

- (a) The use in this solicitation or contract of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the clause.
- (b) The use in this solicitation or contract of any Department of Energy Acquisition Regulation (48 CFR 9) clause with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

(I.180) DEAR 952.242-70, TECHNICAL DIRECTION (DEC 2000)

- (a) Performance of the work under this contract shall be subject to the technical direction of the DOE Contracting Officer's Representative (COR). The term "technical direction" is defined to include, without limitation:
 - (1) Providing direction to the Contractor that redirects contract effort, shifts work emphasis between work areas or tasks, requires pursuit of certain lines of inquiry, fills in details, or otherwise serves to accomplish the contractual SOW.
 - (2) Providing written information to the Contractor that assists in interpreting drawings, specifications, or technical portions of the work description.
 - (3) Reviewing and, where required by the contract, approving, technical reports, drawings, specifications, and technical information to be delivered by the Contractor to the DOE.
- (b) The Contractor will receive a copy of the written COR designation from the CO. It will specify the extent of the COR's authority to act on behalf of the CO.
- (c) Technical direction must be within the scope of work stated in the contract. The COR does not have the authority to, and may not, issue any technical direction that:
 - (1) Constitutes an assignment of additional work outside the SOW;
 - (2) Constitutes a change as defined in the contract clause entitled "Changes;"
 - (3) Changes contract cost, the fee (if any), or the time required for contract performance;
 - (4) Changes any of the expressed terms, conditions or specifications of the contract;
or
 - (5) Interferes with the Contractor's right to perform to the terms and conditions of the contract.
- (d) All technical direction shall be issued in writing by the COR.

- (e) The Contractor must proceed promptly with the performance of technical direction duly issued by the COR in the manner prescribed by this clause and within its authority under the provisions of this clause. If, in the opinion of the Contractor, any instruction or direction by the COR falls within one of the categories defined in (c)(1) through (c)(5) of this clause, the Contractor must not proceed and must notify the CO in writing within five working days after receipt of any such instruction or direction and must request the CO to modify the contract accordingly. Upon receiving the notification from the Contractor, the CO must:
 - (1) Advise the Contractor in writing within 30 days after receipt of the Contractor's letter that the technical direction is within the scope of the contract effort and does not constitute a change under the Changes clause of the contract;
 - (2) Advise the Contractor in writing within a reasonable time that the DOE will issue a written change order; or
 - (3) Advise the Contractor in writing within a reasonable time not to proceed with the instruction or direction of the COR.
- (f) A failure of the Contractor and CO either to agree that the technical direction is within the scope of the contract or to agree upon the contract action to be taken with respect the technical direction will be subject to the provisions of the clause in Section I, 52.233-1 "Disputes."

(I.186) DEAR 970.5204-3, ACCESS TO AND OWNERSHIP OF RECORDS (OCT 2014)

- (a) *Government-owned records.* Except as provided in paragraph (b) of this clause, all records acquired or generated by the contractor in its performance of this contract, including records series described within the contract as Privacy Act systems of records, shall be the property of the Government and shall be maintained in accordance with 36 CFR, Chapter XII, Subchapter B, "Records Management." The contractor shall ensure records classified as Privacy Act system of records are maintained in accordance with FAR 52.224.2 "Privacy Act."
- (b) *Contractor-owned records.* The following records are considered the property of the contractor and are not within the scope of paragraph (a) of this clause.
 - (1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/healthrelated records and similar files), and nonemployee patient medical/health-related records, excluding records operated and maintained by the Contractor in Privacy Act system of records. Employee-related systems of record may include, but are not limited to: Employee Relations Records (DOE-3), Personnel Records of Former Contractor Employees (DOE-5), Payroll and Leave Records (DOE-13), Report of Compensation (DOE-14),

Personnel Medical Records (DOE–33), Employee Assistance Program (EAP) Records (DOE–34) and Personnel Radiation Exposure Records (DOE–35).

- (2) Confidential contractor financial information, internal corporate governance records and correspondence between the contractor and other segments of the contractor located away from the DOE facility (i.e., the contractor's corporate headquarters);
- (3) Records relating to any procurement action by the contractor, except for records that under 48 CFR 970.5232–3 are described as the property of the Government; and
- (4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and
- (5) The following categories of records maintained pursuant to the technology transfer clause of this contract:
 - (i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.
 - (ii) The contractor's protected Cooperative Research and Development Agreement (CRADA) information and appendices to a CRADA that contain licensing terms and conditions, or royalty or royalty rate information.
 - (iii) Patent, copyright, mask work, and trademark application files and related contractor invention disclosures, documents and correspondence, where the contractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.
- (c) *Contract completion or termination.* Upon contract completion or termination, the contractor shall ensure final disposition of all Government-owned records to a Federal Record Center, the National Archives and Records Administration, to a successor contractor, its designee, or other destinations, as directed by the Contracting Officer. Upon the request of the Government, the contractor shall provide either the original contractor-owned records or copies of the records identified in paragraph (b) of this clause, to DOE or its designees, including successor contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act) as appropriate. If the contractor chooses to provide its original contractor-owned records to the Government or its designee, the contractor shall retain future rights to access and copy such records as needed.
- (e) *Applicability.* This clause applies to all records created, received and maintained by the contractor without regard to the date or origination of such records including all records acquired from a predecessor contractor.
- (f) *Records maintenance and retention.* Contractor shall create, maintain, safeguard, and disposition records in accordance with 36 CFR Chapter XII, Subchapter B,

“Records Management” and the National Archives and Records Administration (NARA)-approved Records Disposition Schedules. Records retention standards are applicable for all classes of records, whether or not the records are owned by the Government or the contractor. The Government may waive application of the NARA-approved Records Disposition Schedules, if, upon termination or completion of the contract, the Government exercises its right under paragraph (c) of this clause to obtain copies of records described in paragraph (b) and delivery of records described in paragraph (a) of this clause.

- (g) *Subcontracts*. The contractor shall include the requirements of this clause in all subcontracts that contain the *Integration of Environment, Safety and Health into Work Planning and Execution* clause at 952.223–71 or, the *Radiation Protection and Nuclear Criticality* clause at 952.223–72.

(I.191) DEAR 970.5227-1, RIGHTS IN DATA – FACILITIES (DEC 2000) (DEVIATION)

(a) Definitions.

- (1) Computer data bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.
- (2) Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created, or compiled. The term does not include computer data bases.
- (3) Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term "data" does not include data incidental to the administration of this contract, such as financial, administrative, cost and pricing, or management information.
- (4) Limited rights data, as used in this clause, means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged. The Government's rights to use, duplicate, or disclose limited rights data are as set forth in the Limited Rights Notice of subparagraph (e) of this clause.
- (5) Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software, including minor modifications of any such computer software. The Government's rights to use, duplicate, or disclose restricted computer software are as set forth in the Restricted Rights Notice of paragraph (f) of this clause.
- (6) Technical data, as used in this clause, means recorded data, regardless of form

or characteristic, that are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

- (7) Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, including by electronic means, and perform publicly and display publicly, in any manner, including by electronic means, and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights.

(1) The Government shall have:

- (i) Ownership of all technical data and computer software first produced in the performance of this Contract;
- (ii) Unlimited rights in technical data and computer software specifically used in the performance of this Contract, except as provided herein regarding copyright, limited rights data, or restricted computer software, or except for other data specifically protected by statute for a period of time or, where, approved by DOE, appropriate instances of the DOE Work for Others Program;
- (iii) The right to inspect technical data and computer software first produced or specifically used in the performance of this Contract at all reasonable times. The Contractor shall make available all necessary facilities to allow DOE personnel to perform such inspection;
- (iv) The right to have all technical data and computer software first produced or specifically used in the performance of this Contract delivered to the Government or otherwise disposed of by the Contractor, either as the contracting officer may from time to time direct during the progress of the work or in any event as the contracting officer shall direct upon completion or termination of this Contract. The Contractor agrees to leave a copy of such data at the facility or plant to which such data relate, and to make available for access or to deliver to the Government such data upon request by the contracting officer. If such data are limited rights data or restricted computer software, the rights of the Government in such data shall be governed solely by the provisions of paragraph (e) of this clause ("Rights in Limited Rights Data") or paragraph (f) of this clause ("Rights in Restricted Computer Software"), and Section H clause titled, "Disposition of Intellectual Property – Failure to Complete Contract Performance" included in this contract; and
- (v) The right to remove, cancel, correct, or ignore any markings not authorized by the terms of this Contract on any data furnished hereunder if, in response to a written inquiry by DOE concerning the propriety of the markings, the Contractor fails to respond thereto within 60 days or fails to substantiate the propriety of the markings. In either case DOE will notify the Contractor of the action taken.

(2) The Contractor shall have:

- (i) The right to withhold limited rights data and restricted computer software unless otherwise provided in accordance with the provisions of this clause; and
 - (ii) The right to use for its private purposes, subject to patent, security or other provisions of this Contract, data it first produces in the performance of this Contract, except for data in DOE's Uranium Enrichment Technology, including diffusion, centrifuge, and atomic vapor laser isotope separation, provided the data requirements of this Contract have been met as of the date of the private use of such data.
- (3) The Contractor agrees that for limited rights data or restricted computer software or other technical, business or financial data in the form of recorded information which it receives from, or is given access to by, DOE or a third party, including a DOE Contractor or subcontractor, and for technical data or computer software it first produces under this Contract which is authorized to be marked by DOE, the Contractor shall treat such data in accordance with any restrictive legend contained thereon.

(c) Copyrighted Material.

- (1) The Contractor shall not, without prior written authorization of the Patent Counsel, assert copyright in any technical data or computer software first produced in the performance of this contract. To the extent such authorization is granted, the Government reserves for itself and others acting on its behalf, a nonexclusive, paid-up, irrevocable, world-wide license for Governmental purposes to publish, distribute, translate, duplicate, exhibit, and perform any such data copyrighted by the Contractor.
- (2) The Contractor agrees not to include in the technical data or computer software delivered under the contract any material copyrighted by the Contractor and not to knowingly include any material copyrighted by others without first granting or obtaining at no cost a license therein for the benefit of the Government of the same scope as set forth in paragraph (c)(1) of this clause. If the Contractor believes that such copyrighted material for which the license cannot be obtained must be included in the technical data or computer software to be delivered, rather than merely incorporated therein by reference, the Contractor shall obtain the written authorization of the contracting officer to include such material in the technical data or computer software prior to its delivery.

(d) Subcontracting.

- (1) Unless otherwise directed by the contracting officer, the Contractor agrees to use in subcontracts in which technical data or computer software is expected to be produced or in subcontracts for supplies that contain a requirement for production or delivery of data in accordance with the policy and procedures of 48 CFR Subpart 27.4 as supplemented by 48 CFR 927.401 through 927.409, the

clause entitled, "Rights in Data-General" at 48 CFR 52.227-14 modified in accordance with 927.409(a) and including Alternate V. Alternates II through IV of that clause may be included as appropriate with the prior approval of DOE Patent Counsel, and the Contractor shall not acquire rights in a subcontractor's limited rights data or restricted computer software, except through the use of Alternates II or III, respectively, without the prior approval of DOE Patent Counsel. The clause at 48 CFR 52.227-16, Additional Data Requirements, shall be included in subcontracts in accordance with DEAR 927.409(h). The contractor shall use instead the Rights in Data-Facilities clause at 48 CFR 970.5227-1 in subcontracts, including subcontracts for related support services, involving the design or operation of any plants or facilities or specially designed equipment for such plants or facilities that are managed or operated under its contract with DOE.

- (2) It is the responsibility of the Contractor to obtain from its subcontractors technical data and computer software and rights therein, on behalf of the Government, necessary to fulfill the Contractor's obligations to the Government with respect to such data. In the event of refusal by a subcontractor to accept a clause affording the Government such rights, the Contractor shall:
 - (i) Promptly submit written notice to the contracting officer setting forth reasons or the subcontractor's refusal and other pertinent information which may expedite disposition of the matter, and
 - (ii) Not proceed with the subcontract without the written authorization of the contracting officer.
- (3) Neither the Contractor nor higher-tier subcontractors shall use their power to award subcontracts as economic leverage to acquire rights in a subcontractor's limited rights data or restricted computer software for their private use.
- (e) Rights in Limited Rights Data. Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up license by or for the Government, in any limited rights data of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any limited rights data when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Limited Rights Notice" set forth. All such limited rights data shall be marked with the following "Limited Rights Notice":

Limited Rights Notice

These data contain "limited rights data," furnished under Contract No. [Insert contract number] with the United States Department of Energy which may be duplicated and used by the Government with the express limitations that the "limited rights data" may not be disclosed outside the Government or be used for purposes of manufacture without prior permission of the Contractor, except that further disclosure or use may be made solely for the following purposes:

- (a) Use (except for manufacture) by support services contractors within the scope of their contracts;
- (b) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (c) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Contract is a part for information or use (except for manufacture) in connection with the work performed under their contracts including use by DOE or its contractors as necessary for continued performance of the work or operation of the facility and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;
- (d) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and
- (e) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(End of Notice)

(f) Rights in Restricted Computer Software.

- (1) Except as may be otherwise specified in this Contract as data which are not subject to this paragraph, the Contractor agrees to and does hereby grant to the Government an irrevocable, nonexclusive, paid-up, license by or for the Government, in any restricted computer software of the Contractor specifically used in the performance of this Contract, provided, however, that to the extent that any restricted computer software when furnished or delivered is specifically identified by the Contractor at the time of initial delivery to the Government or a representative of the Government, such data shall not be used within or outside the Government except as provided in the "Restricted Rights Notice" set forth below. All such restricted computer software shall be marked with the following "Restricted Rights Notice":

Restricted Rights Notice-Long Form

- (a) This computer software is submitted with restricted rights under Department of Energy Contract No. [Insert contract number]. It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice.
- (b) This computer software may be:
 - (1) Used or copied for use in or with the computer or computers for which it

was acquired, including use at any Government installation to which such computer or computers may be transferred;

- (2) Used, copied for use, in a backup or replacement computer if any computer for which it was acquired is inoperative or is replaced;
 - (3) Reproduced for safekeeping (archives) or backup purposes;
 - (4) Modified, adapted, or combined with other computer software, provided that only the portions of the derivative software consisting of the restricted computer software are to be made subject to the same restricted rights; and
 - (5) Disclosed to and reproduced for use by contractors under a service contract (of the type defined in 48 CFR 37.101) in accordance with subparagraphs (b)(1) through (4) of this Notice, provided the Government makes such disclosure or reproduction subject to these restricted rights.
- (c) Notwithstanding the foregoing, if this computer software has been published under copyright, it is licensed to the Government, without disclosure prohibitions, with the rights set forth in the restricted rights notice above.
- (d) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of Notice)

- (2) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used.

Restricted Rights Notice-Short Form

Use, reproduction, or disclosure is subject to restrictions set forth in the Long Form Notice of DOE Contract No. [Insert contract number] with [Insert name of Contractor].

(End of Notice)

- (3) If the software is embedded, or if it is commercially impractical to mark it with human readable text, then the symbol R and the clause date (mo/yr), in brackets or a box, a [R-mo/yr], may be used. This will be read to mean restricted computer software, subject to the rights of the Government as described in the Long Form Notice, in effect as of the date indicated next to the symbol. The symbol shall not be used to mark human readable material. In the event this Contract contains any variation to the rights in the Long Form Notice, then the contract number must also be cited.
- (4) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, the software will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions and with

unlimited rights, unless the Contractor includes the following statement with such copyright notice "Unpublished-rights reserved under the Copyright Laws of the United States."

- (g) Relationship to patents. Nothing contained in this clause creates or is intended to imply a license to the Government in any patent or is intended to be construed as affecting the scope of any licenses or other rights otherwise granted to the Government under any patent.